Robbins Door & Sash Company, Inc. *and* **Teamsters Local Union No. 776, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America** *and* **Teamsters Local Union No. 773, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Cases 4-CA-11445 and 4-CA-11613

March 4, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 17, 1981, Administrative Law Judge Thomas A. Ricci issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and a supporting brief, respectively. Charging Party Teamsters Local Union No. 773 filed a brief in opposition to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, and to adopt his recommended Order, as modified herein.[2]

Unlawfulness of the Warning Posted at Respondent's Allentown Facility

The Administrative Law Judge found, and we agree, that Respondent violated Section 8(a)(5) and (1) of the Act by instituting several unilateral changes at its Harrisburg and Allentown facilities without having reached impasse. Furthermore, we agree that, even assuming *arguendo* that impasse had been reached on any of the issues, the changes instituted were not reasonably comprehended within the proposals Respondent had offered to the Union during its bargaining sessions, and thus constituted a violation of Section 8(a)(5) and (1) on this alternative basis.

We disagree, however, with the Administrative Law Judge's conclusion that Respondent did not violate the Act when it posted a warning notice to its Allentown employees at the beginning of October 1980. The notice advised employees of a progressive discipline procedure that would be implemented in the event any employee was found to be engaging in slowdown activity, with a week's suspension imposed for a first offense and discharge for a second offense. Although finding that the issue of discipline procedure in the event of slowdown activity had not been discussed during the six previous bargaining sessions, and that the procedure does not conform to any provision of the previous collective-bargaining agreement, the Administrative Law Judge concluded that Respondent had a right to take such action "[i]n the heat of frustrating negotiations." We conclude that Respondent has no right to effectuate such a change without bargaining. The previous bargaining contract set forth procedure for suspensions and discharges, and the posting of the warning, implementing a different procedure, constituted an unlawful unilateral change in an existing condition of employment. We therefore find that Respondent violated Section 8(a)(5) and (1) of the Act when it posted the warning notice in early October 1980, at its Allentown facility.

Dues Checkoff

Among the changes instituted by Respondent upon expiration of the collective-bargaining agreement at its Harrisburg facility was the discontinuation of checking off union dues from payroll. The Administrative Law Judge concluded that this constituted a violation of Section 8(a)(5) and (1). We disagree. It is well settled that an employer's duty to check off union dues is extinguished upon the expiration of the collective-bargaining agreement which created that duty.[3]

Here, the previous contract expired at the end of July 1980, and the parties were unable to agree on a temporary extension during the course of the negotiations. Respondent ceased deducting the union dues from the payroll in August 1980. Under these circumstances, Respondent's obligation to check off union dues expired with the contract, and its failure to continue to do so did not constitute a violation of Section 8(a)(5) and (1). Accordingly, we shall,

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] While we adopt the Administrative Law Judge's findings that certain of Respondent's conduct violated Sec. 8(a)(5) and (1) of the Act, we find it unnecessary to pass on whether Respondent's conduct also violated Sec. 8(a)(3), as found by the Administrative Law Judge, since such additional findings do not materially affect the remedy.

We do not find that Respondent's conduct constituted the type of egregious behavior which would warrant broad injunctive relief. *Hickmott Foods*, 242 NLRB 1357 (1979). Therefore we conclude that a narrow order would be more responsive to the particular actions of Respondent and the Order is modified accordingly.

[3] *Ortiz Funeral Home Corp.*, 250 NLRB 730, 731, fn. 6 (1980); *Peerless Roofing Co., Ltd.*, 247 NLRB 500 (1980); *Bethlehem Steel Co. (Shipbuilding Division)*, 136 NLRB 1500, 1502 (1962), remanded 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964).

and hereby do, dismiss this allegation of the complaint.

AMENDED CONCLUSIONS OF LAW

1. Delete from Conclusion of Law 3 the following words:

"by discontinuing the practice of deducting union dues from payroll and forwarding them to the Teamsters Union."

2. Substitute the following for Conclusion of Law 4:

"4. By discontinuing payment of Blue Cross and Blue Shield medical insurance benefits on behalf of its employees, by discontinuing contributions to the Teamsters pension fund on behalf of its employees, by denial of holiday benefits previously enjoyed, and by posting a warning notice changing discipline procedure for work slowdown activity, all at the Allentown facility, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act."

3. Delete from Conclusions of Law 3, 4, 5, and 6 the references to Section 8(a)(3).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Robbins Door & Sash Company, Inc., Allentown, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(c):

"(c) Unilaterally posting a warning notice to its employees changing discharge procedure in the event of a work slowdown."

2. Substitute the following for paragraph 1(g):

"(g) In any like or related manner restraining or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act."

3. Delete paragraph 2(f) and reletter subsequent paragraphs accordingly.

4. Substitute the attached notices for those of the Administrative Law Judge.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain with Teamsters Local Union No. 776 as the exclusive representative of the following appropriate bargaining unit employees:

All employees employed and working as shippers, drivers, glaziers, marlite shippers, shopmen, bench hands, helpers and laborers, employed by the Employer at its Harrisburg, Pennsylvania, location, excluding all other employees and all supervisors as defined in the Act.

WE WILL NOT unilaterally continue to withhold payments into the Teamsters pension fund on behalf of the employes in the bargaining unit.

WE WILL NOT unilaterally continue to withhold premium payments into the Teamsters health and welfare fund on behalf of the employees in the bargaining unit.

WE WILL NOT unilaterally change the seniority system, or the holiday and vacation benefits, from the system in existence before August 1980.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL pay into the Teamsters pension fund all moneys unilaterally withheld since expiration of our collective-bargaining agreement with that union in July 1980.

WE WILL compensate all employees adversely affected by our having withheld payments into that fund after expiration of the collective-bargaining agreement with Local 776 in July 1980.

WE WILL make whole Carl Keister, Robert Novakowski, and Dennis Gelnett for any loss of earnings they may have suffered by virtue of their layoff in September 1980, with interest.

WE WILL make whole any employees who have suffered a loss of pay in consequence of our having unilaterally denied them previously enjoyed holiday and vacation benefits.

ROBBINS DOOR & SASH COMPANY, INC.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain with Teamsters Local Union No. 773 as the exclusive representative of the following appropriate bargaining unit employees.

All truckdrivers, helpers and warehousemen at the Employer's Allentown, Pennsylvania, facility, excluding all other employees and all supervisors as defined in the Act.

WE WILL NOT unilaterally continue to withhold payments into the Teamsters pension fund on behalf of the employees in the bargaining unit.

WE WILL NOT unilaterally continue to withhold premium payment to Blue Cross and Blue Shield to the benefit of the employees in the bargaining unit.

WE WILL NOT unilaterally change our holiday and/or vacation benefit system from the system in effect before August 1980.

WE WILL NOT unilaterally continue to post warning notices regarding a new discharge policy in the event of work slowdown activity, or to implement such policy.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL pay into the Teamsters pension fund all moneys unilaterally withheld since expiration of our collective-bargaining contract with that union in July 1980.

WE WILL compensate all employees adversely affected by our having withheld payments to Blue Cross and Blue Shield after expiration of the collective-bargaining agreement with Local No. 773 in July 1980.

WE WILL make whole any employees who have suffered a loss of pay by our having unilaterally denied them previously enjoyed holiday and vacation benefits.

ROBBINS DOOR & SASH COMPANY, INC.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge: This is a consolidated proceeding in which a hearing was held on July 15 and 16, 1981, in Harrisburg, Pennsylvania, on separate complaints issued against Robbins Door & Sash Company, Inc., herein called the Respondent or the Company. In Case 4-CA-11445 a complaint issued on November 12, 1980, based on a charge filed by Teamsters Local Union No. 776, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 776, on September 25, 1980. In Case 4-CA-11613 a complaint issued on December 23, 1980, based on a charge filed on November 19, 1980, by Teamsters Local Union No. 773, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 773. The issues presented are whether the Respondent violated Section 8(a)(5) at both of these locations. Briefs were filed after the close of the hearing by all parties.

Upon the entire record and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Pennsylvania corporation, is engaged in the wholesale distribution of millwork and related products at both the two locations involved. During the year preceding issuance of the complaints, the Respondent purchased and received goods and materials valued in excess of $50,000 directly from out-of-state sources. I find that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

I find that both Locals No. 776 and No. 773, affiliated with the Teamsters International Union, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

This is essentially a refusal-to-bargain case, presenting diversified details but all interrelated to a single fundamental question. Two of the Respondent's locations are involved, one at Harrisburg and the other in Allentown, both in Pennsylvania. The Teamsters Union has for years represented the employees at both places, Local 776 at Harrisburg and Local 773 at Allentown. The last collective-bargaining agreements between the parties expired in July 1980, the one in Harrisburg on July 29 and the one in Allentown on July 31. There were a number of bargaining sessions aimed at contract renewal at both places, with the respective Local Union and management agents participating; proposals and counterproposals in great number were exchanged. The same company lawyer participated in all the negotiation conferences.

The Local 776 contract at Harrisburg was not extended upon its expiration. The Union called a strike the next day, and all 12 employees ceased work. They offered to return 3 weeks later and were all reinstated. At Allentown Local 773 and the Company agreed to, and did, extend their contract to September 8, 1980. There was no strike at that location, where about 11 employees work. The bargaining sessions, which had started in July, continued into September, October, and December. As to Harrisburg, at least, as one of the company witnesses said: "The Company is open to negotiations." This means that as of July 15, 1981, the day of the hearing, the Company still conceded the Union's continuing majority representative status.

Each of the union contracts had been in effect for 3 years when they expired; they covered in detail every aspect of the employees' duties, obligations, and compensations, both direct wages and so-called indirect fringe benefits. And the Respondent always complied with the contracts and implemented their terms into what then became the established conditions of employment. After the contracts expired, albeit at different dates at the two locations, the Respondent changed many of these "conditions of employment" without advance notice to the employees or to either of the Local Unions. This, while it was engaged in collective-bargaining negotiations with the exclusive majority representatives. The complaints call each of these unilateral changes in conditions of employment a deliberate bypassing of the established bargaining agent, and therefore violations of Section 8(a)(5) of the Act.

At the Harrisburg location, beginning in August, the Company stopped all payments to the Teamsters pension fund, and to the Teamsters health and welfare fund; it also stopped checking off union dues and sending them to the Union. In Allentown, after September 8, it discontinued both the pension fund contributions and the Blue Cross and Blue Shield payments. As the months went on, the Company also changed its vacation policy, and began denying the employees some of the holidays they had enjoyed during the previous years. This was all done without advance notice to or agreement by the Unions on any item so changed.

Changing substantive conditions of employment without first discussing the idea with a bargaining agent, indeed during the very period that the parties are engaged in the collective-bargaining process, is a direct unfair labor practice, is the clearest of Board law. *N.L.R.B.* v. *Benne Katz, Alfred Tinkel, and Murray Katz, d/b/a Williamsburg Steel Products Company*, 369 U.S. 736 (1962). Exactly what the Respondent's argument, or arguments, in defense of this case may be, I was unable to really comprehend throughout the hearing.

One defense contention that seems to emerge from the oblique testimony by company witnesses is that because any party to any contract is no longer bound by its terms once it has expired, the employer, in this instance, was free to carry on its business as though the contracts had never existed. Repeated emphasis was placed on the fact that the Allentown contract expired on September 8, and not later. The Respondent also made much of the fact that it wanted to extend the Harrisburg contract for a further period so that it would remain in effect while the parties continued talking. In fact, on July 29, the very last day of the contract, the Respondent convinced Harry Arnold, the business agent who did most of the talking for Local 776, to agree to a 2-day extension. But when Arnold, that night, had a meeting of all the employees to get a vote consideration based on the Respondent's last offer on all the contract items discussed, the employees voted to reject the offer as it stood and also voted not to extend the contract at all. They chose instead to strike.

If this is the Respondent's defense argument, it fails completely.[1] When an employer changes an employee's hourly rate of pay, discontinues contributions to his insurance for medical and hospital expenses, stops payments for work performed in the form of contributions towards his retirement-pension fund, all without consulting the statutory bargaining agent about its decision to make the changes then and there, its conduct is violative of the law not because it disregards a contract, but because it ignores the employee's bargaining agent in fixing the terms of employment. Regardless of whether there is a contract in effect, if an employer is free to do as it chooses—and never mind the union—the entire scheme of the statute is frustrated. This is what is meant by an exclusive bargaining agent; the employer may not deal with the employees—make changes of any kind in their pay or other things earned for work—as though the bargaining agent did not exist. It is not the contract that binds the hands of the employer when a majority representative exists, it is Section 8(a)(5) of the Act. The many unilateral changes made by the Respondent were unfair labor practices not because it violated any contract—there was no contract when it made the changes—but because it ignored its duty to bargain as the statute commands.

The same argument—that absent a binding contract the employer may act independently of any union in the picture—is obliquely made via another route. On August 18, after being on strike for about 3 weeks, the Harrisburg employees decided to return to work. When their business agent, Arnold, made the offer to return to Manager Myron Ace, he handed him a letter. The letter read, in part: "After this vote was taken and substantiated there was a lot of discussion pertaining to returning to work under all conditions of the Collective-Bargaining Agreement that was in force from July 30, 1977 to July 29, 1980, while we continue to negotiate a settlement that could be ratified by the membership." All Ace did was read the letter on the phone to company counsel and then tell the men they could return to work the next morning, which they did.

Incredibly, counsel for the Union, on the record, contended that the "returning strikers became covered by the contract . . . by virtue of this letter." When the Re-

[1] In his brief counsel for the Respondent repeatedly joins two concepts—impasse and contract expiration—as though the two were one and the same. At one point he says: "The employee benefit programs expired with the expiration of the old contract inasmuch as there was neither (1) any further extension nor (2) any new agreement. The Teamsters were well aware of the effect of its non-agreement to extend the old contract and acceded thereto."

spondent insisted—however variously its witnesses voiced their contentions—that whatever was said that day did not amount to mutual agreement to reinstate and extend the old contract for any predictable period—it was absolutely right. Collective-bargaining agreements must be in writing, clear, and unquestionable in their attainment. After very formally rejecting the Respondent's repeated proposal to extend the old contract, it will not do for the Union to argue that just because the employees made clear they were returning to work, "under all conditions" of the past, a new contract came into being. No need to comment further on that.

But again, it does not follow from the fact that there was no contract after the employees returned, that the Employer was free to ignore the exclusive bargaining agent and to set new rules of employment as pleased its purpose. And we are therefore back at the beginning.[2]

Still another defense argument seems to be—although I am not sure how this one was intended—that because, after they were put in effect and first understood by the employees, the Union did not protest the various unilateral changes made, the Union agreed to them, or waived any legal right to complain, or is estopped from now filing any charges with the Board. It is old Board law that waiver by a union of any statutory rights must be in "clear and unmistakable language." *The Timken Roller Bearing Company*, 138 NLRB 15 (1962). There certainly was nothing like that here. Even silence—not that it happened here—does not constitute a waiver. *Bierl Supply Company*, 179 NLRB 741 (1969). If in writing a valid waiver must be unquestionably clear and direct, more so if the waiver is to be implied must it appear outrightly convincing. A possible explanation—one never to be ignored—is that the reason why Local No. 776 did not strike a second time, now in protest over the deprivation of a previously enjoyed form of compensation, was because of uncertainty as to the Respondent's capacity to replace the strikers. Had the Union at Harrisburg struck when an employee first learned, after his wife had gone to the hospital, that the medical bills were no longer covered by insurance, it would have been an unfair labor practice strike. The Respondent could not have replaced any strikers permanently in such a situation. But when a union strikes it cannot be sure, in advance, what the Board will hold in subsequent litigation of unfair labor practice charges.

As stated above, Louis Busch, the Respondent's counsel, was present at all bargaining sessions for both locations. There were times, as the many changes in employment conditions were made, and caught the employees by surprise, when Business Agent Arnold, himself present at all the Harrisburg meetings, went directly to the manager of the plant to complain, and ask for explanations. Busch objected to this, and wrote several letters to Arnold saying he should not ignore "the Employer's spokesman in collective bargaining." At one point, during the hearing, he was asked, "Is it a defense that the company could act unilaterally and ignore the union because the union attempted to appeal the case to the ownership instead of his lawyer. Is that an argument?" The lawyer answered: "It is a defense if he is bypassing the bargaining representative . . . ." Without comment, I find no merit in that argument as a defense basis against the complaint.

As it happened, there was protest against some of the denials of existing benefits. When Arnold, of Local No. 776, heard in late August that the health and welfare insurance payments had been discontinued he complained to the Harrisburg manager, who told him to see the company lawyer about it. All the lawyer said in explanation was: "[I]t's my [Arnold's] problem and [if] I can get anything out of them fine. I can take care of them. They're our members, so it's our problem, not the company's."

There is a certain amount of confusion in the record as to exactly when some of the unilateral changes in conditions of employment were made. But it is of no great moment now, for there is no question that each of the changes were in fact made, all of them, before the negotiation sessions ended. Because in each and every instance the Respondent committed an unfair labor practice, it must restore the status quo; i.e., make every payment for benefits it illegally withheld and make whole any employee who was deprived of holiday or vacation benefits he was entitled to. It will be time enough, at the compliance stage of this proceeding, to examine more carefully both records of the Company and of the Union to ascertain the exact amounts to be paid by the Respondent as part of the remedy required.

But in one respect the element of timing is significant now because of the ultimate defense contention made by the Respondent in its brief. It speaks there of what happened with respect to the Allentown location only, but I take the defense position as intended for Harrisburg as well. It argues impasse, and cites Board cases holding that when talking and bargaining has ended with the parties deadlocked on all issues so that it can be said no further negotiations could intelligently take place, the employer may put into effect those terms and conditions it tried unsuccessfully to sell to the Union in proper negotiations. This is not what happened in this case, and the impasse defense contention therefore will not serve.

What the Respondent is really saying here is that whenever the Union flatly rejects one particular proposal by the employer—once, twice, or three times—there comes into being an impasse as to that particular item in dispute, and the employer may then and there put that one of its proposals in effect regardless of anything else, as though the continuing bargaining on all other issues had nothing to do with that one condition of employment. But collective bargaining towards a comprehensive contract means a balancing of all its terms, one offsetting another as the parties weigh the relative value of one

[2] I reach the same conclusion with respect to a mailgram Local 773 sent to the Respondent at Allentown on August 18. Although no employees there were ever on strike, the Union wrote to the Company saying the employees were agreeable to keep on working while the contract negotiations continued. Among other things, the message read: "Our position continues to be inclusive of a willingness to work under the identical terms and conditions of the said collective bargaining agreement." As it happened, the parties at Allentown did extend their old contract through September 8, but that was something entirely apart from the one-sided statement of position, or desire, of Local 773 set out in its mailgram. Contracts do not come into being because one party tells the other—unilaterally—that there is a contract.

demand or proposal against all the others. There is a relationship that binds all the terms of a contract into one bundle, so to speak. In fact, throughout the remaining bargaining sessions that took place at both these locations as the parties went along there was agreement on many items. If the Locals were firm in not yielding to the Respondent's insistence on discontinuing some of the substantial benefits the employees previously enjoyed, the Company was no less adamant in its position with respect to those same items. Each party has a right to be firm in this or that among the many economic elements of the total package eventually sought. It is this very wheeling and dealing back and forth offering this tidbit in return for that that collective bargaining is all about.

A perfect example of the Respondent's theory is what happened at Harrisburg with respect to the health and welfare benefits. There were six bargaining sessions for that location—July 15, 18 and 19, August 18, September 22, and October 22. Among the Company proposals that Local 776 refused to yield on was discontinuance of the health and welfare payments to the employees' benefit. On August 1, the Respondent discontinued all payments into that fund. Bargaining continued during the next 3 months but the Company never resumed those payments. If the Company had a right to implement one of its offers which up to that moment the Union had refused to concede, it means it had a similar right to put in effect each and every other of its various proposals which the Union was still not ready to yield on. In that case, what purpose could be served by the bargaining sessions which came later? Putting rejected proposals in effect apace as the bargaining goes on frustrates the entire collective-bargaining process. This is what is meant under Board law as prohibited action before any impasse has been reached.

The Company continued doing the same thing, still at Harrisburg. On September 1 it discontinued payments into the pension fund. It stopped checking off union dues as it had been doing in the past. It changed the holiday system, denying—it would appear—previously enjoyed holiday benefits. This, all in accordance with its own not as yet accepted proposals and all before the final bargaining sessions of October 22. In short, the Respondent acted, in its treatment of the employees, as though the collective bargaining in which it were engaged meant nothing.

As to Allentown, there were bargaining sessions on July 24, 30, and 31, on August 13, 15 and 25, and on December 8. Here it is said an impasse came into being on August 13, such as to justify every unilateral change the Respondent made thereafter. And again, the three negotiation sessions that followed, in each of which the parties discussed very many items still in dispute, are totally ignored. But while the Respondent speaks of the August 13 session as to the total cutoff date for everything, its brief shows that it asks for impasse justification one disputed item at a time, each separate from any other issue discussed. On December 4 it changed the established vacation policy. From the Respondent's brief: "On December 4, 1980, Robbins implemented its proposed Vacation policy which the Teamsters discussed and rejected during the second meeting on July 30, 1980." This is but another way of saying that when a union firmly rejects a company proposal at any stage of the bargaining, the employer is free to implement that particular one. The same idea appears in repeated phrases such as "ongoing impasse," "the Teamsters were intractable," "the truculence of the Union," and "the intransigence of the Union," etc.

That the Respondent in fact rejected the fundamental principle of collective bargaining in this case is more conclusively shown by the action it took at Allentown at the end of September. It will be recalled that the contract at that location had been extended to no later than September 8. At the end of that month, without advanced notice to the Union or to the employees, the Company discontinued all payments into the health and welfare fund and into the pension fund. Never, during all the preceding negotiations, had it proposed such a change in the existing conditions in those two respects at this location. When the parties met again later on December 8, it is not surprising that despite the efforts of a Federal mediator all the talking that followed failed. For the Respondent now to say that because Local 773 raised no great protest against this kind of unilateral change serves little in exculpation. If ever unilateral action came as a surprise, this was it. Anyway, on the question of silence by the offended party even here, see *Allen W. Bird II, Receiver for Caravelle Boat Company, a Corporation and Caravelle Boat Company*, 227 NLRB 1355 (1977).

It is one thing for an employer to put in effect a condition of employment it in good faith tried to sell the union while attempting to reach a new contract. It is something else again to change position, with no notice to the union representatives, and put in effect a condition of employment much more damaging to the employees than that which the company had consistently tried to sell to the union. *Taft Broadcasting Co., WDAF AM-FM TV*, 163 NLRB 475 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968). Clearly, even if the hard bargaining before expiration of the old contract could be viewed as an impasse, these unilateral actions were an absolute bypassing of the bargaining agent, and prove beyond question a determination by the Respondent to make a mockery of the collective-bargaining process.

I find that at the Harrisburg location the Respondent violated Section 8(a)(3) and (5) of the Act by each of the following acts: (1) discontinued payments into the health and welfare fund; (2) discontinued payments to the pension fund; and (3) denied holiday benefits previously enjoyed by the employees, and that by discontinuing the system of payroll deduction of dues checkoffs it violated Section 8(a)(5).

I find that at the Allentown location the Respondent violated Section 8(a)(3) and (5) of the Act by each of the following acts: (1) discontinued payment of Blue Cross and Blue Shield insurance benefits; (2) discontinued contributions to the pension fund; and (3) denied holiday benefits previously enjoyed on November 11 and November 28, 1980.

By the end of calendar year 1980, the Respondent had committed so many outright unfair labor practices tied directly to the union bargaining that it had reduced the entire process to a shambles. In fact by letter dated De-

cember 5, the Respondent's lawyer told Business Agent Arnold that his union Local 776 no longer represented the majority of the employees and that "it was in error for the company to attempt to negotiate." As it had before, the Company continued to carry on its business as though the Union did not exist. On January 1, 1981, it posted a notice to the Harrisburg employees announcing a completely new, very detailed, vacation policy. It sets out exactly how much vacation is earned after how many years of service and explains new rules for its implementation. Exactly how this new policy compared with the long-established system was left hanging at the hearing, the witnesses disagreeing on whether it was better or worse. But it was admitted by the management witness that it represented a change from the past. It is precisely that one fact—that the Company changed an existing condition of employment without notice to or bargaining with the majority representative—that proves the unfair labor practice. In this instance, there is not even a claim that the innovation put in effect an offer previously made and rejected—to impasse—by the Union.

Just how much the employees lost in benefits by this change in vacation policy will be verified with precision in compliance, later. I find that by announcing the new vacation policy, and by putting it into effect, the Respondent again violated Section 8(a)(3) and (5) of the Act.

There was another departure from past practice at Harrisburg, this one involving seniority rights. The expired union contract there, received in evidence, shows exactly what the established practice was. On September 23 the Company informed three shop employees—Keister, Novakowski, and Gelnett—that they were being laid off 6 days later for economic reasons. Within the group—shopmen, warehousemen, and truckdrivers—there are 12 employees. These three men worked in the shop at that time. In the past seniority governed among all of them in case of layoff. As shown by the old contract: "Seniority, based on length of continuous service with the Company shall prevail at all times when skill and ability are equal." But in this case the Respondent did not act according to seniority. Keister's seniority dated back to 1968 and Gelnett's to 1974. There were two truckdrivers, Sheaffer and Goodlin, who had both first been hired in 1978. And Novakowski, hired in February 1975, was senior to Strawser, hired in September of that year. The three layoffs were therefore clearly in violation of the established system. At one point Ace, the manager at Harrisburg, said he selected these three men for layoff "because these people were shopmen." Faced with the union contract which showed a broader seniority right in the past, he then shifted and said, at another point in his testimony, that these men did not have the proper licenses to drive trucks in this area. But Ace also admitted, as to Keister at least: "I'm sure that he would've been able to do it [drive a truck] then." As to Gelnett, Ace's testimony is that "to the best of my knowledge" the man did not have a license. When the Union protested discrimination against the three men in question, both Keister and Gelnett were returned to work as truckdrivers. Insofar as the third man is concerned, there was no question of licensing involved, and the record shows clearly that work as a warehouseman, which Strawser, junior to him, was doing, is really no different from the duties of a shopman. If anything, less skill is required of a warehouseman.

Again I find that by departing from the established seniority system, and thereby laying off these three men out of turn, without advance notice to or bargaining with Local 776 on the subject, the Respondent violated Section 8(a)(3) and (5) of the Act. There was talk between union and company representatives about an economic layoff in the shop before this happened, but whatever it was the Company intended to do, the union spokesman did not agree. Merely telling the union agent what the Respondent intends to do does not suffice to excuse what is a clear unilateral change of conditions of employment during the collective-bargaining process.

There is one final allegation in the complaint that I do not think is supported by the evidence. At the beginning of October the Company posted the following notice in Allentown:

WARNING

> This constitutes a warning to all employees concerning slow down activity. Any attempt by any employee not to do a full day's work for a full day's pay will be subject to the following action: —1. First offense—one week discharge without pay. 2. Second offense—discharge.

While not really disputing the Respondent's right to threaten discharge of an employee for engaging in a deliberate slowdown on the job, the General Counsel argues that the method of procedure on just how to punish any possible offender could only be set after discussion with the Union. To characterize this notice as a unilateral change in existing conditions of employment requires too great a straining of words. There was no slowdown experience in the past, and there was no detailed system for discipline against such form of behavior. In the heat of frustrating negotiations, with the Company depriving the employees of past benefits while ignoring their union, it would not be surprising if some kind of tension, and even misbehavior in the shop, took place. I think in such circumstances the employer has a right to announce it will take drastic action to enforce a full day's work for a full day's pay. In any event, the notice apparently served a salutary purpose, for no one was found guilty and the notice was removed soon thereafter.

IV. THE REMEDY

As set out above, to undo the effects of its unfair labor practices the Respondent must resume paying to the employees' benefit premiums for health and welfare benefits in Harrisburg to the Union's fund, and in Allentown to Blue Cross and Blue Shield. If it should come to light that any of the employees here involved incurred medical, hospital, or related expenses, which they personally had to pay, in consequence of having lost the previously

enjoyed insurance coverage, the Respondent shall have to reimburse them individually for such expenses paid.

The Respondent must also pay into the Union's pension fund all moneys withheld at both locations from the day it discontinued such payments to the day it bargains in good faith with each of the two Teamsters locals.

As to holidays and vacations denied employees at both locations in consequence of the unilateral action taken by the Respondent, it must make whole the employees so prejudiced, the exact amounts due to be determined by a later investigation of pertinent records.

In addition, the Respondent must make whole Keister, Novakowski, and Gelnett for any loss of earnings suffered in consequence of their having been improperly laid off in September 1980.

And finally, the Respondent must, on request of the local unions, bargain in good faith in each of the bargaining units.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. By refusing to bargain in good faith with Teamsters Local Union No. 776, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as exclusive bargaining agent of employees in the appropriate bargaining unit, the Respondent has violated and is violating Section 8(a)(5) of the Act. The appropriate bargaining unit is:

> All employees employed and working as shippers, drivers, glaziers, marlite shippers, shopmen, bench hands, helpers and laborers, employed by the Employer at its Harrisburg, Pennsylvania, location, excluding all other employees and all supervisors as defined in the Act.

2. By refusing to bargain in good faith with Teamsters Local Union No. 773, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining agent of employees in the appropriate bargaining unit, the Respondent has violated and is violating Section 8(a)(5) of the Act. The appropriate bargaining unit is:

> All truckdrivers, helpers and warehousemen at the Employer's Allentown, Pennsylvania, facility, excluding all other employees and all supervisors as defined in the Act.

3. By discontinuing payments into the health and welfare fund, by discontinuing payments into the Teamsters pension fund, by discontinuing the practice of deducting union dues from payroll and forwarding them to the Teamster Union, and by denying holiday benefits previously enjoyed by its employees, all at its Harrisburg location, the Respondent has violated and is violating Section 8(a)(5) and (3) of the Act.

4. By discontinuing payment of Blue Cross and Blue Shield medical insurance benefits on behalf of its employees, by discontinuing contributions to the Teamster pension fund on behalf of its employees, and by denial of holiday benefits previously enjoyed, all at its Allentown location, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (5) of the Act.

5. By announcing and implementing a changed vacation policy at its Allentown location, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (5) of the Act.

6. By laying off employees Carl Keister, Robert Novakowski, and Dennis Gelnett, the Respondent has violated and is violating Section 8(a)(3) and (5) of the Act.

7. By all of the foregoing conduct the Respondent has violated and is violating Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

ORDER[3]

The Respondent, Robbins Door & Sash Company, Inc., Allentown and Harrisburg, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with Teamsters Locals 776 and 773 for its Harrisburg and Allentown, Pennsylvania, locations, respectively, as the exclusive bargaining representatives of all the employees in the appropriate units.

(b) Unilaterally discontinuing payments, on behalf of all the employees involved, for health and welfare insurance, Blue Cross and Blue Shield insurance, and retirement pension fund.

(c) Refusing to deduct union dues via payroll deduction and forwarding them to Local 776.

(d) Unilaterally denying holiday benefits to the employees involved previously enjoyed, without bargaining with their union on the subject.

(e) Changing its vacation policy to the disadvantage of the employees without prior consultation with the Union.

(f) Laying off employees in disregard of their established seniority rights, without prior consultation with and bargaining with their union representative.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed under Section 7 of the Act.

[3] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain collectively with Teamsters Local Unions 776 and 773, as the exclusive representatives of the employees in the appropriate units described below, with regard to rates of pay, hours of employment, and other terms and conditions of employment and, if understandings are reached, embody such understandings in signed agreements. The appropriate bargaining units are as follows:

> All employees employed and working as shippers, drivers, glaziers, marlite shippers, shopmen, bench hands, helpers and laborers, employed by the Employer at its Harrisburg, Pennsylvania, location, excluding all other employees and all supervisors as defined in the Act.
>
> All truckdrivers, helpers and warehousemen at the Employer's Allentown, Pennsylvania, facility, excluding all other employees and all supervisors as defined in the Act.

(b) Make whole Carl Keister, Robert Novakowski, and Dennis Gelnett for any loss of earnings they may have suffered by virtue of their unlawful layoff in September 1980.

(c) Make whole any of the employees in each of the two bargaining units for any loss of pay they may have suffered in consequence of the Respondent's unlawful denial of holiday and vacation benefits previously enjoyed.

(d) Pay into the Teamsters pension fund all money to the credit of employees at both Allentown and Harrisburg that have been withheld since expiration of the union contracts in July 1980, and resume making such payments until such time as the Respondent bargains with both locals in good faith.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Resume making payroll dues deductions on behalf of authorizing employees and forward such dues to the respective Union Locals.

(g) Post at its Allentown and Harrisburg, Pennsylvania, locations copies of the attached notices marked "Appendixes A and B."[4] Copies of said notices, on forms provided by the Regional Director for Region 4, after being signed by its representatives, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

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[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."